



## BUSINESS OF THE CITY COUNCIL CITY OF SNOQUALMIE

**AB22-138**  
**September**  
**26, 2022**  
**Discussion**

### AGENDA BILL INFORMATION

<b>TITLE:</b>	AB22-138: Community Center Expansion Project -- Alternative Public Works Contracting Options	<input checked="" type="checkbox"/> Discussion Only
<b>PROPOSED ACTION:</b>	N/A. Discussion only.	<input type="checkbox"/> Action Needed: <input type="checkbox"/> Motion <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution

<b>REVIEW:</b>	Department Director/Peer	Mike Chambless	9/16/2022
	Finance	Choose an item.	Click or tap to enter a date.
	Legal	Bob Sterbank	9/16/2022
	City Administrator	Mike Sauerwein	9/16/2022

<b>DEPARTMENT:</b>	Legal		
<b>STAFF:</b>	Bob C. Sterbank, City Attorney		
<b>COMMITTEE:</b>	Parks & Public Works	<b>COMMITTEE DATE:</b> September 20, 2022	
<b>MEMBERS:</b>	Bryan Holloway	Jo Johnson	Ethan Benson
<b>EXHIBITS:</b>	N/A.		

<b>AMOUNT OF EXPENDITURE</b>	\$ n/a
<b>AMOUNT BUDGETED</b>	\$ n/a
<b>APPROPRIATION REQUESTED</b>	\$ n/a

### SUMMARY

#### INTRODUCTION

This agenda bill provides an introductory discussion concerning available alternative public works contracting options available to the City for design and construction of the Community Center Expansion Project.

#### LEGISLATIVE HISTORY

Resolution No. 1508, adopted August 12, 2019.

Res. No. 1508 authorized and requested that the Mayor and Administration refine the proposed Snoqualmie Community Center expansion project, and present to the City Council recommendations for action on certain identified subjects, including identification of project partners, *e.g.*, YMCA of Greater Seattle, Snoqualmie Valley School District No. 410 ("School District") and/or the Si View Metropolitan Park District ("Park District"), along with the type and general parameters of any contracts, operating agreements or such other legal documents needed to memorialize partners' participation.

Resolution No. 1520, adopted October 14, 2019.

In Res. No. 1520, the City Council formally declined the Si View Park District's proposal for City of Snoqualmie participation in a proposed Si View Park District aquatics facility, due to the substantial project cost of the proposed aquatics facility and need for additional property tax increases on City of Snoqualmie taxpayers. Res. No. 1520 also renewed the City Council's request for development of options for a six-lane pool and presentation to the Council of recommendations for action on components outlined in Res. No. 1508.

## **BACKGROUND**

For a number of years, the City of Snoqualmie has been considering expansion of the Community Center with a pool and related improvements. Through the resolutions described above, in late 2019 the Council outlined a path forward and sought additional analysis, options and recommendations from the Administration. The onset of the COVID-19 pandemic a short brought active planning for Community Center expansion to a halt for several years.

At the 2022 City Council retreat, the Council identified the Community Center expansion project as a priority. The Council also included the Community Center Expansion Project (Project ID No. FAC21001CIP) in the 2023-2028 Capital Improvement Plan with an identified budget of \$29.8 million for a 24,000 square-foot expansion with an aquatic center with six-lane lap pool, expanded cardio center, improved locker rooms, a common use space, additional community meeting rooms, and additional office space.

## **ANALYSIS**

### "Public Work" Bid Requirements.

Under Washington law, any "work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality," or which by law constitutes a lien or charge on any municipal property, constitutes a "public work." Typically, a "public work" must first be designed by an architect or engineer selected through a statutorily-specified process. Likewise, construction of "public work" projects are subject to several statutory requirements, primarily, the requirement that a "public work" project with an estimated cost in excess of \$350,000 must be performed by contract. Generally speaking, by statute, the design and proposed construction contract for a "public work" must be publicly bid, and the contract for construction awarded to the lowest responsible, response bidder. This process is referred to as the "design/bid/build" process for a "public work."

### Exceptions to Bid Requirements – Lease / Lease Back

There are certain exceptions to the design/bid/build requirements. One exception, the "lease / lease back" option, allows a city or town desiring to acquire a building to lease city-owned land for a term not to exceed fifty years, and then lease the newly-constructed building back over the same term. The existing Snoqualmie Community Center was originally constructed using this method. A city may purchase the building at the end of the lease term, or may accelerate the lease by essentially pre-paying purchasing the building and land. The statute requires that "[a] lease and lease back agreement requiring a lessee to build on city or town property shall be made pursuant to a call for bids upon terms most advantageous to the city or town," although this terminology has typically been interpreted as allowing a city some flexibility in selecting a proposed builder/lessee, rather than requiring award to a lowest bidder.

The lease / lease back statute also requires, however, that "No part of the cost of construction of the building shall ever be or become an obligation of the city or town," which means that the lessee must typically bear most construction cost risks. This can affect who and how many builders respond to a lease / lease back proposal, and who may be able to successfully negotiate a contract meeting the statute's requirements. Additional complications can result from circumstances where existing buildings stand on property to be leased, and the buildings themselves have existing tenants with ongoing operations, as is the case with the Community Center and its existing operator (YMCA). In addition, tax-exempt bond limitations on private use

can limit or preclude use of the lease / lease back option if facility expansion is expected to be financed with tax-exempt bonds, or if the public agency desires to retain the option of future use of tax-exempt bond financing at some point during the project.

Exceptions to Bid Requirements – Alternative Public Works Contracting Methods in Ch. 39.10 RCW.

Other exceptions to a traditional design/bid/build process are provided by the “alternative public works contracting” methods outlined in state statute, Chapter 39.10 RCW. These alternative methods are described primarily as the “design-build” and “general contractor construction manager” (“GCCM”) methods.

Under a design-build approach, a city would advertise for proposals and select a single entity to both design and build the project. The design-builder is selected based on qualifications and scoring against criteria identified in the request for a proposal, and the city would then negotiate a contract with the selected design-builder, based on terms that are acceptable to the city. If the city is unable to execute a contract with the finalist submitting the highest scored proposal, negotiations with that finalist may be suspended or terminated and negotiations begun with the next highest scored finalist, continuing with this procedure until a contract agreement is reached or the selection process is terminated. Overall, this process provides considerably more flexibility than the traditional design/bid/build, or a lease / lease back process, greater control over risk allocation, which typically also results in greater total design/construction cost certainty.

The GCCM process is similar to the design-build, except that before inviting a GCCM proposal, a city typically has some or all of design work completed by the city’s own architect/ engineer/design team, before inviting proposals from interested contractors. The invitation for proposals must include an estimated “maximum allowable construction cost,” or “MACC.” Like a design-builder, a GCCM contractor is selected first based on qualifications, which include experience and technical competence of key personnel; past performance with negotiated or similarly complex projects; the proposer's capacity to perform the work; the scope of work the firm proposes to self-perform and its past performance of that scope of work; and the proposer's approach to executing the project, including ability to meet the project time and budget requirements. Using these qualifications, the city selects finalists, who then must submit proposals that include a sealed bid with a proposed contractor fee, expressed as a percentage of the project’s MACC. The public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public solicitation of proposals. As with design-build, once a preferred GCCM candidate is selected, the city then negotiates a contract with the selected proposer to arrive at a final negotiated MACC, along with the fixed amount for the detailed specified general conditions work, negotiated support services, and the percent fee on the negotiated maximum allowable construction cost. If the city is unable to negotiate a satisfactory MACC within available funds with the selected firm, negotiations are formally terminated and negotiations begin with the next highest scored firm.

Use of Alternative Public Works Contracting Methods Requires State Approval.

When alternative public works methods were first allowed in Washington State by statute in the early 2000s, only the State, the University of Washington, and certain large counties and cities were able to use these alternative methods, and only for specified types of projects that exceeded certain price thresholds. Gradually, the Legislature loosened these restrictions, finally making the alternative methods generally permanently available to all public bodies in Washington in 2019.

However, a public body that has not previously utilized an alternative method must first apply to a State committee, the Project Review Committee (“PRC”) of the State Capital Projects Advisory Review Board (“CPARB”). To obtain PRC approval, a city must first receive approval from the PRC for a specific, identified project, and then demonstrate successful completion of that project. The city may thereafter apply for and

obtain PRC approval to generally use alternative methods; if granted such certification is valid for a three-year term.

To obtain PRC approval process for a specified project, a city must demonstrate to the PRC that:

- (a) the alternative contracting procedure will provide a substantial fiscal benefit or the use of the traditional method of awarding contracts in lump sum to the low responsive bidder is not practical for meeting desired quality standards or delivery schedules;
- (b) The proposed project meets the requirements for using the alternative contracting procedure as described in state statutes;
- (c) The public body has the necessary experience or qualified team to carry out the alternative contracting procedure including, but not limited to: (i) Project delivery knowledge and experience; (ii) sufficient personnel with construction experience to administer the contract; (iii) a written management plan that shows clear and logical lines of authority; (iv) the necessary and appropriate funding and time to properly manage the job and complete the project; (v) continuity of project management team, including personnel with experience managing projects of similar scope and size to the project being proposed; and (vi) necessary and appropriate construction budget;
- (d) For design-build projects, public body personnel or consultants are knowledgeable in the design-build process and are able to oversee and administer the contract; and
- (e) The public body has resolved any audit findings related to previous public works projects in a manner satisfactory to the committee.

#### **BUDGET IMPACTS**

N/A at this time. Discussion only.

#### **NEXT STEPS**

Staff will present an agenda bill for a contract for consultant services for assistance with an application for Project Review Committee approval of the use of an alternative public works method for the Community Center Expansion Project.

#### **PROPOSED ACTION**

N/A. Discussion only.